



UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700

Mailed: APR 18 2005

MEB
Paper Number:

In re application of :
Michael J. Maloney : DECISION ON
Serial No. 10/037,000 : PETITION
Filed: December 21, 2001 :
For: Thermal Barrier Coating Systems and Materials

This is a response to the PETITION TO WITHDRAW ABANDONMENT, filed January 24, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment of January 3, 2005, for failure to timely reply to the Notice of Allowance of August 23, 2004 be withdrawn. The petitioner asserts that the response was timely filed by facsimile on August 31, 2004, with the appropriate fees.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding a Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed.

As set forth in MPEP 711.03(c) Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed:

37 CFR 1.10(c) through 1.10(e) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 CFR 1.10(c), (d), or (e) (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date. Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held



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abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt. Where a certificate of mailing or transmission under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

The petitioner's showing that the response and appropriate fees were submitted by facsimile on August 31, 2004 is sufficient. The application will be forwarded to for processing and consideration of the papers filed January 24, 2005, by facsimile transmission (Certificate of Transmission date of August 31, 2004) and a copy of which is provided as an attachment to the instant petition.

The Petition is Granted.



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